

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

DAVID G. HENRY,

Plaintiff,

vs.

TACOMA POLICE DEPARTMENT,
RON KOMAROVSKY AND BRYNN
CELLAN

Defendants.

No. 3:22-cv-05523-LK

DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION TO AMEND
COMPLAINT

I. SUMMARY RESPONSE

Defendants, by and through the undersigned Deputy City Attorney, Kimberly J. Cox, have no objection to Plaintiff's Motion to Amend Complaint,¹ though request the Court require Plaintiff's Motion to Amend comply with the requirements of Fed. R. Civ. P 15 and Local Court Rule (LCR) 15. Defendants also request additional time to file their Answer to the Amended Complaint, assuming it is properly noted and presented.

Defendants assume Plaintiff's motion is made pursuant to Fed. R. Civ. P.15(a)(2) and LCR 15.

¹ Filed and served March 28, 2023 (Dkt. 54) concurrently with [Proposed Amended] Complaint (Dkts. 54, 54-1. 55. 55-1).

II. DISCUSSION

Plaintiff seeks to amend his Complaint, originally filed July 19, 2022.² Plaintiff has refiled his Complaint on a number of occasions.³ Defendants filed their Answer on February 15, 2023.⁴ Plaintiff has failed to note a date for consideration of the motion, as required by LCR 7(b), (d). Also, Plaintiff has not provided Court or undersigned counsel his proposed amending pleading with changes clearly marked, as required by LCR 15. *See Dkts. 54-1, 55-1.*

Undersigned counsel understood from previous communications with Plaintiff that he intended to amend his Complaint to substitute City of Tacoma as a defendant in place of defendant Tacoma Police Department only. Undersigned counsel understood from communications with Plaintiff that this was a result of Defendants' Answer, specifically Defendants' denial that the Tacoma Police Department was a proper party subject to the jurisdiction of this Court.⁵ Undersigned counsel advised Plaintiff that the City of Tacoma and current Defendants had no objection to substituting parties as discussed.

Undersigned counsel does not recall discussing with Plaintiff additional amendments he appears to be proposing with his [Proposed Amended] Complaint. Specifically, Plaintiff appears to be adding a named defendant in addition to the City of Tacoma (City of Tacoma Mayor Victoria Woodards). Similarly, undersigned counsel does not recall any communications with Plaintiff discussing Plaintiff's intent to amend

² See Dkt. 1.

³ See Dkts. 35-2, 36-2, 37-2, 39, 48-2, 49-2, 50-2.

⁴ See Answer filed February 15, 2023. Dkt. 51.

⁵ See Answer filed February 15, 2023, Dkt. 51 at ¶ I(B). (51)

1 his Complaint to include additional legal and factual allegations.⁶ A review of the
 2 [Proposed Amended] Complaint revealed these additional amendments.

3 Defendants request that the Court require Plaintiff's Motion to Amend comply
 4 with the requirements of LCR 7 and LCR 15. With that said (and done), at this time,
 5 there does not appear to be any prejudice or disadvantage--other than repeatedly
 6 answering Plaintiff's Complaint--to the Defendants or the City of Tacoma should the
 7 Court grant Plaintiff's Motion to Amend.⁷

8 Finally, pursuant to Fed. R. Civ. P 15(a)(3) and LCR 15, Defendants respectfully
 9 request the Court allow additional time to file their Answer to the [Proposed Amended]
 10 Complaint. Specifically, Defendants request that their Answer to [Proposed Amended]
 11 Complaint be due no earlier than May 1, 2023. This request is based on the pending
 12 unavailability of undersigned counsel,⁸ as well as other known professional obligations
 13 and deadlines between now and end of April 2023.⁹

14 III. CONCLUSION

15 Defendants, including proposed defendant City of Tacoma, do not object to
 16 Plaintiff's Motion to Amend Complaint. Defendants respectfully request, pursuant to
 17 Fed. R. Civ. P 15(a)(3), that their Answer be due no earlier than May 1, 2023.
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22 ⁶ See (Proposed) Amended Complaint, ¶¶ I(B), III(D)(appearing to add basis for liability
 23 language), IV. (adding factual allegations as well as language about other unrelated
 24 matters). Dkt. 55-1.

25 ⁷ Counsel's signature below serves as attestation under penalty of perjury under the
 laws of the State of Washington that factual statements included herein in Section II are
 true and accurate to the best of counsel's knowledge and belief.

⁸ See Notice of Unavailability filed January 31, 2023. (Dkt. 47)

⁹ See FN 7.

1 I certify that this memorandum contains 493 words, in compliance with the
2 Local Civil Rules.”

3 DATED this 29th day of March, 2023.

4 WILLIAM C. FOSBRE, City Attorney

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7 By: /s/Kimberly J. Cox
8 KIMBERLY J. COX
9 WSBA #19955
Deputy City Attorney
Attorney for Defendant

DECLARATION OF SERVICE

I hereby certify that on March 29, 2023, I sent a true and correct copy of the
DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO AMEND COMPLAINT
to the following via email and US Postal Mail:

Pro Se Plaintiff:

David Henry
605 SUMMERCOURT DR
JONESBORO, GA 30236
psychiclogistics@gmail.com
360-399-5442

DATED March 29, 2023, at Tacoma, Washington.

/s/Gisel Castro
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